

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SALLY R SCHULTZ

Claimant

APPEAL 21A-UI-03569-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS M JENEARY DDS, PC

Employer

OC: 03/29/20

Claimant: Respondent (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer/appellant, Thomas M. Jeneary, D.D.S., P.C., filed an appeal from the January 12, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2021. The claimant, Sally R. Schultz, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Brenda Galles.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed effective October 25, 2020?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked as a full-time dental assistant for this employer, beginning in July 2018. Claimant generally worked 30-35 hours per week. Claimant’s hourly rate was \$18.50.

For the week of October 25-31, 2020, claimant worked 31.22 hours before October 28, 2020, when she permanently separated from employment. She earned \$577.57 for the week. She did not report the wages when she made her weekly continued claim for the week.

The issue of claimant's permanent separation/requalification has not yet been addressed by the Benefits Bureau.

The claimant's weekly benefit amount is \$378.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with

respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

For the week of October 25-31, 2020: Claimant earned wages in excess of her weekly-benefit amount, plus fifteen dollars for the weeks of October 25-31, 2020. Because the claimant has earned wages in excess of her weekly-benefit amount, plus fifteen dollars, she cannot be considered partially unemployed for those weeks. Iowa Code 96.19(38) and Iowa Admin. Code r. 871-24.18. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

Effective November 1, 2020: Claimant was no longer employed for this employer under the same hours and wages for which she was hired. The issue of claimant's separation/requalification is remanded to the Benefits Bureau for an initial investigation.

The issue of claimant's unrecorded wages in conjunction with her claim for the week ending October 31, 2020 is also remanded to the Benefits Bureau for an adjustment.

DECISION:

The unemployment insurance decision dated January 12, 2021, (reference 02) is modified in favor of the employer/appellant. The claimant was not unemployed for the week of October 25-31, 2020. Benefits are denied for this week. Effective November 1, 2020, claimant was permanently separated from this employment and no longer employed at the same hours/same wages for which she was hired.

REMAND:

The issue of claimant's separation/requalification is remanded to the Benefits Bureau for an initial investigation. The issue of claimant's unrecorded wages in conjunction with her claim for the week ending October 31, 2020 is also remanded to the Benefits Bureau for an adjustment.

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits October 25-31, 2020. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). More information about how to apply for PUA is available online at: www.iowaworkforcedevelopment.gov/pua-information

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>



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March 31, 2021
Decision Dated and Mailed

jlb/scn